

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**DAKOTA HOLLAND, #20061896,**

**Plaintiff,**

**vs.**

**Case No. 20-cv-01248-JPG**

**KENNY BENZING,**

**ALLISON ALEXANDER,**

**RICH STEVENSON,**

**DANIL DOE,**

**J. DAIL,**

**KAYLA DOE,**

**and JOHN DOE ##1-4,**

**Defendants.**

**MEMORANDUM & ORDER**

**GILBERT, District Judge:**

Plaintiff Dakota Holland filed this civil rights action *pro se* pursuant to 42 U.S.C. § 1983 and the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346, 2671-2680, to challenge unsafe conditions of confinement at Marion County Law Enforcement Center. (Docs. 1 and 8). In the First Amended Complaint, Plaintiff did not mention any defendants in the statement of his claim, and he included no request for relief. (Doc. 8, pp. 7-8). The First Amended Complaint did not survive screening under 28 U.S.C. § 1915A and was dismissed on April 16, 2021. (Doc. 10).

Plaintiff was granted leave to file a Second Amended Complaint on or before May 17, 2021. (*Id.* at 4). He was warned that the action would be dismissed with prejudice and a “strike,” if he failed to file the Second Amended Complaint by this deadline. (*Id.*) (citing FED. R. CIV. P. 41(b); 28 U.S.C. § 1915(g); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994)). Plaintiff was also reminded of his continuing

obligation to update his address with the Court within a week of any address change. (Doc. 10, p. 5). He was warned that failure to do so could result in dismissal of the case. (*Id.*).

Plaintiff's missed the deadline for filing a Second Amended Complaint. Moreover, the Order Dismissing First Amended Complaint (Doc. 10) was returned to the Court undeliverable on May 6, 2021. This is because Plaintiff did not notify the Court of his address change. The Court has received no notice since then.

The Court will not allow this matter to linger indefinitely. This action shall be dismissed with prejudice based on Plaintiff's failure to comply with the Order (Doc. 10) to file a First Amended Complaint on or before May 17, 2021. *See* FED. R. CIV. P. 41(b). This dismissal shall count as one of Plaintiff's three allotted "strikes" within the meaning of 28 U.S.C. § 1915(g).

### **Disposition**

**IT IS HEREBY ORDERED** that this action is **DISMISSED** with prejudice, based on Plaintiff's failure to comply with the Court's Order (Doc. 10) to file a First Amended Complaint. *See* FED. R. CIV. P. 41(b); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). This dismissal counts as one of Plaintiff's three allotted "strikes" within the meaning of Section 1915(g).

Plaintiff is **ADVISED** that his obligation to pay the filing fee for this action was incurred at the time the action was filed, regardless of subsequent developments in the case. Accordingly, the filing fee of \$350.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

If Plaintiff wishes to appeal this Order, he may file a notice of appeal with this Court within thirty days of the entry of judgment. FED. R. APP. 4(A)(4). If Plaintiff does choose to appeal, he will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the appeal. *See*

FED. R. APP. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien*, 133 F.3d at 467. Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur another “strike.” A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of judgment, and this 28-day deadline cannot be extended.

The Clerk’s Office is **DIRECTED** to close this case and enter judgment accordingly.

**IT IS SO ORDERED.**

**DATED: 5/19/2021**

**s/J. Phil Gilbert**  
**J. PHIL GILBERT**  
**United States District Judge**